

ESTTA Tracking number: **ESTTA303820**

Filing date: **08/31/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Abercrombie & Fitch Trading Co.
Granted to Date of previous extension	08/29/2009
Address	6301 Fitch Path New Albany, OH 43054 UNITED STATES

Attorney information	Susan M. Kayser, Caroline C. Smith Howrey LLP 2941 Fairview Park Drive Suites 200 and 300 FALLS CHURCH, VA 22042 UNITED STATES ipdocketing@howrey.com
----------------------	--

Applicant Information

Application No	77117258	Publication date	06/30/2009
Opposition Filing Date	08/31/2009	Opposition Period Ends	08/29/2009
Applicant	Cheney, Kenneth Michael 645 Gunby Road Marietta, GA 30067 UNITED STATES		

Goods/Services Affected by Opposition

Class 025.

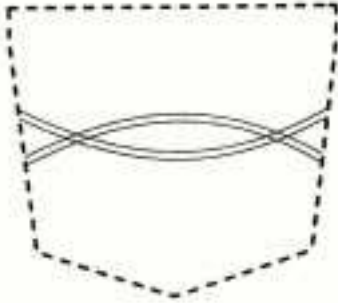
All goods and services in the class are opposed, namely: Clothing, sports clothing, apparel and outerwear, namely, t-shirts, shirts, golf shirts, tops, bottoms, shorts, sweat pants, athletic uniforms; outer jackets; sports uniforms; hats; caps; headwear

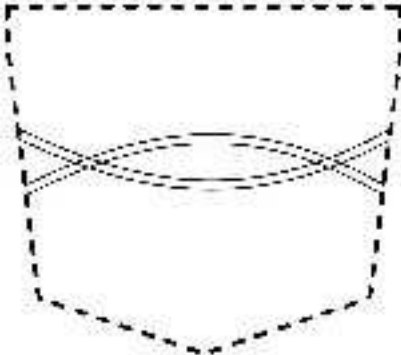
Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2626917	Application Date	05/17/2001
Registration Date	09/24/2002	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of a pair of double-lined stitches, extending continuously across the rear pocket of the goods. The stitches are curved, intersecting twice, forming an oval shape in the center of the pocket. The dotted lines are used to indicate the positioning of the mark on the goods and are not a feature of the mark.
Goods/Services	Class 025. First use: First Use: 2001/02/00 First Use In Commerce: 2001/02/00 clothing, namely, denim jeans sold in specialty retail clothing stores, [specialty mail order catalog] and Internet website

U.S. Registration No.	3135750	Application Date	09/20/2005
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a pair of double-lined stitches, extending continuously across the pocket of the goods. The stitches are curved, intersecting twice, forming an eye shape in the center of the pocket. The broken lines outlining the pockets are used to indicate the positioning of the mark on the goods and are not a feature of the mark.		
Goods/Services	Class 025. First use: First Use: 2001/02/01 First Use In Commerce: 2001/02/01 jeans; skirts, shorts; pants; jackets		

Attachments	76258313#TMSN.jpeg (1 page)(bytes) 78716362#TMSN.jpeg (1 page)(bytes) Notice of Opposition - App Np. 77117285.pdf (7 pages)(198099 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/Kelly R. McCarty/
Name	Kelly R. McCarty, Attorney, Howrey LLP
Date	08/31/2009

)	
Abercrombie & Fitch Trading Co.,)	
)	Opposition No. _____
Opposer,)	
)	Application No.: 77/117,258
v.)	
)	Date of Filing: February 27, 2007
Kenneth Michael Cheney (U.S. Individual))	
)	
Applicant.)	
)	

Abercrombie & Fitch Trading Co., an Ohio corporation with its principal place of business at 6301 Fitch Path, New Albany, Ohio 43054, believes that it is or will be damaged by registration of Application No. 77/117,258, owned by Kenneth Michael Cheney, a United States individual, with a principal address at 645 Gunby Road, Marietta, Georgia 30067, and hereby opposes same.

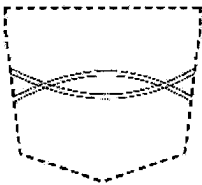
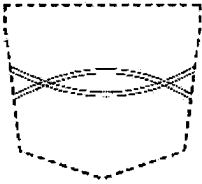
Clothing, sports clothing, apparel and outerwear, namely, t-shirts, shirts, golf shirts, tops, bottoms, shorts, sweat pants, athletic uniforms; outer jackets; sports uniforms; hats; caps; headwear, in International Class 25.

1

1. The parent company of Opposer, Abercrombie & Fitch Co., is one of the largest manufacturers, wholesalers and retailers of high quality, casual apparel and accessories for men, women, and children with an active, youthful lifestyle in the U.S.A. The parent company and its predecessors in interest have been engaged in the business of manufacturing and selling high-end apparel and related accessories in the United States, for over 100 years.

2. Opposer, Abercrombie & Fitch Trading Co., is a wholly-owned subsidiary and holding company of Abercrombie & Fitch Co., the parent company, a Delaware corporation.

3. Opposer is the owner of the following U.S. Registrations of the “A&F Design” mark.

REGISTRATION NO.	MARK	REG. DATE	FIRST USE DATE	GOODS
U.S. Reg. No. 2,626,917		September 24, 2002	February, 2001	clothing, namely, denim jeans sold in specialty retail clothing stores, and via an Internet website.
U.S. Reg. No. 3,135,750		August 29, 2006	February, 2001	jeans; skirts, shorts; pants; jackets

4. In accordance with § 5 of the Federal Trademark Act, all use of the A&F Design mark by Opposer's affiliated and related companies, as alleged herein, inures to the benefit of Opposer.

5. Opposer's Registration No. 3,135,750 identified above is *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use this mark in commerce, and is constructive notice of Opposer's ownership thereof, as provided by § 22 of the Federal Trademark Act of 1946, as amended.

6. Opposer and its predecessors in interest have sold jeans, pants, shorts, skirts and jackets bearing its A&F Design mark since 2001, well prior to the filing date of the opposed application. Opposer's A&F Design mark has been in valid and continuous use since the date of first use and has not been abandoned.

7. Opposer's sales revenue for Abercrombie & Fitch and abercrombie brand pants, skirts and shorts bearing the A&F Design mark in the United States is over \$1 billion.

8. Opposer's A&F Design branded clothing are sold in its 348 "Abercrombie & Fitch" and 211 "abercrombie" stores across the country, as well as through its websites www.abercrombie.com and www.abercrombiekids.com.

9. Opposer's www.abercrombie.com website, which prominently displays and offers for sale clothing items bearing the A&F Design mark, receives over 6.3 million hits per month. Likewise, Opposer's www.abercrombiekids.com website, which also prominently displays and

offers for sale clothing items bearing the A&F Design mark, receives over 1.4 million hits per month.

10. Opposer released and distributed catalogs prominently displaying and offering for sale clothing bearing the A&F Design mark until 2007. The distribution for Opposer's last catalog, Back to School 2007, was 750,000 copies.

11. Opposer also promotes its A&F Design branded clothing via promotional emails to customers who have registered for Opposer's e-mail distribution list. More than 1.9 million customers subscribe to the Abercrombie & Fitch e-mail distribution list and more than 600,000 subscribe to the abercrombie e-mail distribution list.

12. As a result of Opposer's extensive advertisement, marketing and promotion, the Abercrombie & Fitch brand has become exceedingly popular. For years, the Abercrombie & Fitch brand has placed in the top five trendiest retail concepts in the United States for Opposer's target market.

13. Given the volume of sales, extensive advertisement and popularity of clothing bearing the A&F Design mark, Opposer's mark has become famous, well-known and recognized as a distinctive symbol of Opposer's goodwill.

14. Opposer's A&F Design mark became famous, well-known and recognized prior to Applicant's use of its mark and application for registration thereof.

15. Applicant's mark is confusingly similar to Opposer's A&F Design mark.

16. The goods included in Opposer's Registration Nos. 3,135,750 and 2,626,917 are the same as and/or are commercially related to the goods covered by Application No. 77/117,258.

17. The goods covered by Application No. 77/117,258 are sold to the same or overlapping classes of purchasers as goods bearing the A&F Design mark.

18. Prospective purchasers, purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods covered by its the mark in the opposed application emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

19. Applicant's use of the mark shown in Application No. 77/117,258 is likely to dilute the A&F Design mark.

20. Registration of Applicant's mark will lessen the capacity of Opposer's famous and well-known mark to identify and distinguish its goods.

21. Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's Design mark so resembles the A&F Design mark as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act, and to dilute Opposer's A&F Design mark thereby damaging Opposer.

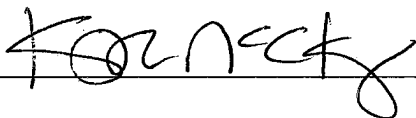
WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present opposition be sustained and the registration of Application No. 77/117,258 be refused.

The requisite filing fee for this Notice of Opposition is submitted herewith.

Respectfully submitted,

Abercrombie & Fitch Trading Co.

August 31, 2009

By: 

Susan M. Kayser
Caroline C. Smith
Kelly R. McCarty
Attorneys for Applicant
Howrey LLP
2941 Fairview Park Drive
Falls Church, VA 22042-4522
202.783.0800

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition was served on Applicant at the address shown below by depositing same in the United States mail, first class, postage prepaid, this 31st day of August 2009:

Danielle I. Mattessich
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

Michelle Noël